

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JOE H. BANDY,

Civil 06-0173 (JRT/SRN)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

J. SOUTHWICK, *et al.*,

Defendants.

Joe H. Bandy, #125257, Minnesota Correctional Facility – Lino Lakes, 7525 Fourth Avenue, Lino Lakes, MN 55014, appearing pro se.

Carolyn Nearing, **GERAGHTY O’LOUGHLIN & KENNEY, PA**, Alliance Bank Center, Suite 1100, St. Paul, MN 55101, for defendant Southwick.

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by United States Magistrate Judge Susan Richard Nelson dated January 29, 2009, all the files and records, and no objections having been filed to said Report and Recommendation.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant Southwick’s Motion for Summary Judgment [Doc. No. 145] is **GRANTED**;
2. the action against Defendants Kendall, Sorry and Rossolli is **DISMISSED** for failure to prosecute;
3. the Clerk’s Office is directed to **DISMISS** former Defendant Ralph Flesher, as he is not a named defendant in the Third Amended Complaint;

4. and this action is **DISMISSED WITH PREJUDICE.**

Dated: March 18, 2009
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge